



## **ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9901-45-Region2]

### **New York State Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Receipt of petition and tentative affirmative determination.

**SUMMARY:** Notice is hereby given that, pursuant to Clean Water Act Section 312(f)(3), the State of New York has determined that the protection and enhancement of the quality of the New York State (NYS or the State) area of Lake Erie requires greater environmental protection, and has petitioned the United States Environmental Protection Agency, Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

NYS has proposed to establish a “Vessel Waste No Discharge Zone” for the NYS area of Lake Erie stretching from the Pennsylvania-New York State boundary to include the upper Niagara River to Niagara Falls. The proposed No Discharge Zone encompasses approximately 593 square miles and 84 linear shoreline miles, including the navigable portions of the Upper Niagara River and numerous other tributaries and harbors, embayments of the Lake including Barcelona Harbor, Dunkirk Harbor and Buffalo Outer Harbor, and other formally designated habitats and waterways of local, state, and national significance.

On December 6, 2012, the EPA completed the review of NYS's petition and issued a tentative affirmative determination in the Federal Register that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels for such waters are reasonably available.

During the 30-day public comment period, the EPA received significant comments regarding the availability of adequate pumpouts for commercial vessels. Specifically, two commenters submitted that the December 6, 2012 notice did not contain adequate information about the availability of pumpout facilities for large commercial vessels. Therefore, the EPA and New York State collected additional information to demonstrate the reasonable availability of pumpout services for commercial vessels that use the New York area of Lake Erie. The EPA hereby republishes its tentative affirmative determination with the additional information included.

**DATES:** Comments regarding this tentative determination are due by [INSERT DATE 30 DAYS FROM THE PUBLICATION DATE IN THE FEDERAL REGISTER].

Petition: The Lake Erie No Discharge Zone Petition is available at:

<http://www.epa.gov/region2/water/permits.html>.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [chang.moses@epa.gov](mailto:chang.moses@epa.gov). Include "Comments on Tentative Affirmative Decision for NYS Lake Erie NDZ" in the subject line of the message.
- Fax: 212-637-3891

- Mail and Hand Delivery / Courier: Moses Chang, U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, NY 10007-1866. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding federal holidays.)

**FOR FURTHER INFORMATION CONTACT:** Moses Chang, (212) 637-3867, e-mail address: chang.moses@epa.gov

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the State of New York has petitioned the United States Environmental Protection Agency, Region 2, (EPA) pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS area of Lake Erie.

#### **New York State's Certification of Need**

The New York State Department of Environmental Conservation (DEC) developed its petition in collaboration with the New York State Department of State (DOS) and the New York State Environmental Facilities Corporation (EFC) in order to establish a vessel waste No Discharge Zone (NDZ) on the open waters, tributaries, harbors and embayments of the New York State area of Lake Erie, and has submitted a Certification of the Need for Greater Protection and Enhancement of Lake Erie waters. Below is a summary of the basis for New York's certification.

The Great Lakes are the largest group of freshwater lakes on Earth, containing 95% of the fresh surface water in the United States and acting as the largest single reservoir on Earth. The glacial history and the influence of the Lakes themselves create unique conditions that support a wealth

of biological diversity, including over 200 globally rare plants and animals and more than 40 species that are found nowhere else in the world.

Lake Erie is the smallest and shallowest of the Great Lakes, with depths that range from an approximate average of 24 feet in the western basin, to 82 feet in the deeper eastern basin.

Because of its shallowness, it warms quickly in the spring and summer and cools quickly in the fall. As a result, Lake Erie is the most biologically productive of the Great Lakes.

The Lake Erie watershed is also home to approximately one-third of the total human population of the Great Lakes basin - 11.6 million people (10 million in the U.S. and 1.6 million in Canada), including 17 metropolitan areas with more than 50,000 residents. The majority, 11 million people, receive their drinking water from the Lake. Of all the Great Lakes, Lake Erie is exposed to the greatest stress from urbanization, industrialization and agriculture. Because the Lake Erie basin supports the largest population, it also surpasses all the other Great Lakes in the amount of effluent discharged from sewage treatment plants.

There are 18 designated Significant Coastal Fish and Wildlife Habitats in the two counties that comprise New York's Lake Erie shoreline including: Cattaraugus Creek, Dunkirk Harbor, Buckhorn Island Wetlands and Grand Island Tributaries. These habitats are essential to the survival of a large portion of lake fish or wildlife population and support populations of species which are of special concern and which have significant commercial, recreational, and educational value.

The New York State shoreline and waters of Lake Erie also host a variety of swimming, boating and recreational activities. These recreational activities act as a source of revenue to the regional economy by bringing people to the shoreline, where they patronize local businesses.

Virtually all of Lake Erie is classified by New York State as Class A waters. This classification means that the best uses of these waters are for drinking, culinary or food processing purposes, recreation and fishing, and that the waters shall be suitable for fish, shellfish, and wildlife propagation and survival. Also, when the water in the Lake is used as a source of drinking water, it must comply with the New York State Department of Health's (DOH) drinking water safety standards. There are currently six New York municipal and community water supplies, including Buffalo and Erie County, that draw water from Lake Erie to serve approximately 275,000 people.

In summary, as one of the nation's premier water bodies, Lake Erie supports several important uses, including drinking water supplies, valuable habitats, commercial shipping, recreational boating and other recreational activities, and serves as an economic engine for the region. The protection and enhancement of the open waters, tributaries, harbors and embayments of the New York State area of Lake Erie require greater protection than is afforded by applicable federal standards. An NDZ designation covering the NYS waters of the Lake represents one component of a comprehensive approach to water quality management, which also includes initiatives to control point and non-point source pollution, including pollution associated with municipal discharges, combined sewer overflows, and storm water runoff.

### **Adequacy and Availability of Sewage Pumpout Facilities**

Adequate pumpout facilities for recreational vessels are defined, under the Clean Vessel Act, as one pumpout station for every 300 – 600 boats. *See* Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (Federal Register, Vol. 59, No. 47, March 10, 1994). Two major sources of information were consulted to develop a reasonable estimate of recreational vessel population. The first was DOS's Clean Vessel Act Plan ("Statewide Plan"), released in 1996. Using data from the Statewide Plan, the estimated number of recreational vessels in each of the counties bordering Lake Erie is 2,029. The second source for the State's estimate of the recreational vessel population is boater registrations, obtained through the New York State Office of Parks, Recreation and Historic Preservation's 2010 Boating Report (OPRHP Report) for the counties of Erie and Chautauqua (all of which have shoreline on Lake Erie). The data in the OPRHP Report yields an estimate of 2,204 vessels with marine sanitation devices (MSDs) in the respective counties, which are assumed to operate in Lake Erie.

The State provided sufficient information about fifteen pumpout facilities that are publicly available for use by recreational and small commercial vessels in the New York State area of Lake Erie, and which either discharge to a holding tank, to a municipal wastewater treatment plant or to an on-site septic system. All fifteen were created through funding provided by the Clean Vessel Assistance Program (CVAP), and are thus required to be open to the public. Nine additional marinas are located along Lake Erie in New York State, including five at which CVAP funding could support the development of future pumpout facilities for recreational and small commercial vessels. However, only the fifteen CVAP funded facilities were considered in determining the adequacy and availability of pumpout facilities for those vessels. Those facilities are summarized in Table 1, below. Using those fifteen facilities, and the most conservative estimate of small vessel usage of the NYS area of the Lake, the ratio of pumpout facilities to

recreational vessels is 15:2,204, or 1:147. This ratio falls well within the range recommended in the Clean Vessel Act guidance, and therefore demonstrates that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational and small commercial vessels are reasonably available for the New York State area of Lake Erie.

Lake Erie is also used by large commercial vessels. The commercial vessel population was estimated using data from the National Ballast Information Clearinghouse, which records ballast water discharge reports for ships arriving, among other places, at the commercial ports in Buffalo and Lackawanna. In 2010, ballast manifests showed 62 vessels arriving at the Port of Buffalo and one arriving at the Gateway Metroport, in Lackawanna. The majority (58) of these vessels were bulkers, with two passenger ship arrivals and one more listed as “other.” The single arrival in Lackawanna was also a bulk. Two commenters representing commercial vessel operators submitted comments stating that more than 62 large commercial vessels use the New York State area of Lake Erie. One commenter estimated that the number was closer to 80, while the other commenter estimated that the number was “over a hundred.”

Although there is no fixed commercial vessel pumpout facility at either the Port of Buffalo or the Port of Lackawanna, information submitted in the petition, and by companies that provide mobile pumpout services, demonstrates that at least four companies are available and qualified to provide pumpout services to large commercial vessels at either port. In addition to commenting on the number of commercial vessels using the NYS area of Lake Erie, the two commenters submitted criteria they believe are necessary for determining whether a pumpout truck is able to service their vessels. Those criteria were taken into consideration, and were partially incorporated into the list of final criteria the EPA used to determine the reasonable availability of

those services. In addition, one commenter confirmed that, while large commercial vessels can hold multiple thousands of gallons of wastewater, it is more likely that when these vessels discharge sewage, their holding tanks contain less than 4,000 gallons of wastewater. Based on all of this information, the EPA had determined that four mobile pumpout companies, with approximately ten pumpout trucks (listed in Table 2, below), are able to provide pumpout services to large commercial vessels at the ports of Buffalo and Lackawanna. Assuming, conservatively, that 100 large commercial vessels use the NYS area of Lake Erie and given that at least four companies with as many as ten pumpout trucks are able to provide pumpout services to these vessels at both New York ports, the ratio of pumpout facilities to commercial vessels is at least 4:100, or 1:25. While the Clean Vessel Act guidance applies, by its terms, only to recreational vessels, the ratio it recommends is instructive for purposes of determining the reasonable availability of pumpout services for large commercial vessels as well. In light of the relatively low ratio of pumpout companies to large commercial vessels (and the even lower ratio of pumpout *trucks* to large commercial vessels), adequate pumpout facilities for the safe and sanitary removal of sewage for large commercial vessels are reasonably available for the New York State area of Lake Erie.

<b>Table 1:</b> List of Sewage Pumpout Stations in the Proposed Lake Erie NDZ Serving Recreational and Small Commercial Vessels						
<b>#</b>	<b>Name</b>	<b>Location</b>	<b>Contact Information</b>	<b>Days and Hours of Operation</b>	<b>Water Depth (feet)</b>	<b>Fee</b>
1	City of Dunkirk – Municipal Dock	Dunkirk Harbor	716-366-9882	April 1 – November 15  6 am – 6 pm	6' – 7'	\$5.00



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2	Niagara Frontier Trans. Authority – Small Boat Harbor	Buffalo Harbor and Buffalo River	716-855-7230	May 15 – October 15  7:00 am - 10:30 pm	6’ – 8’	\$0.00
3	RCR Yachts Skyway Marina	Buffalo Harbor and Buffalo River	716-856-6314	April 1 – November 30  8:30 am - 5:30 pm	12’	\$5.00
4	City of Buffalo – Erie Basin Marina	Buffalo Harbor and Buffalo River	716-851-5389	May 1 – October 15  7:00 am - 7:00 pm	10’	\$6.50
5	Rich Marine Sales, Inc.	Buffalo Harbor and Buffalo River	716-873-4060	May 1 – November 1  9:00 am - 5:00 pm	6’	\$5.00
6	Harbour Place Marine Sales. Inc.	Buffalo Harbor and Buffalo River	716-876-5944	April 15 – October 31  24 Hours	12’	\$5.00
7	NYSOPRHP – Beaver Island State Park Transient Marina	Grand Island	716-278-1775	May 15 – October 15  24 Hours	10’	\$5.00
8	Blue Water Marine	Grand Island	716-773-7884	May 1 – November 1  9:00 am-7:00 pm	5’	\$ 0.00

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9	Mid River Marina Inc.	Tonawanda Creek	716-875-7447	April 1 – September 30  9:00 am-6:00 pm	5'	\$5.00
10	Collins Marine Inc.	Tonawanda Creek	716-875-6000	April 1 – November 1 24 Hours	6'	\$5.00
11	The Shores/Placid Harbor Marine – Tonawanda Marine Develop Corp.	Tonawanda Creek	716-625-8235	April 15 – October 15  9:00 am-9:00 pm	12'	\$5.00
12	Niagara River Yacht Club	Tonawanda Creek	716-693-2882	May 1 – November 1  Dusk - Dawn	NA	\$3.00
13	Smith Boys of North Tonawanda – Upgrade	Tonawanda Creek	716-695-3472	April – November  24 Hours	8'	\$0.00
14	East Pier Marine, Inc.	Tonawanda Creek	716-693-6604	May 1- November 15  9:00 am - 8:00 pm	5'	\$5.00
15	NYSOPRHP- Big Six Mile Creek State Marina	Grand Island	716-278-1775	May 1- November 1  24 Hours	10'	\$5.00

**Table 2:** List of Sewage Pumpout Services Capable of Serving Large Commercial Vessels in the Proposed Lake Erie NDZ

#	Name Of Company	Location & Contact Information	# of Sewage Hauler Pumpout Trucks / Holding Capacity	Days and Hours of Operation	Hose Fittings & Length (feet)	Head Pump Pressure to Reach 46.5 Ft	Truck serve the Port Area	Fee/ Cost per 1,000 Gal
1	Macken Services, Inc.	22 Simme Road, Lancaster, NY 14086  Tel- 716 683 0704	3 sewage trucks - 2 4,000 gal and 1 - 2,500 gal	Mon – Fri 7:00 am - 5:00 pm; or by appointment	Flexible 100 ft	Yes	Yes	\$ 230
2	Meyer Septic Service	7130 Olean Road, South Wales, NY 14139  Tel- 716 652 0553	3 sewage trucks - 3,500 gal each	Mon – Fri 8:00 am - 2:00 pm; or by appointment	Flexible up to 175 ft	Yes	Yes	\$ 255
3	Western New York Septic Tank Cleaning Service	3045 Daniels Road Wilson, NY 14172  Tel-716 751 9611	2 sewage truck - 4,000 gal each	Mon – Fri 7:00 am - 5:00 pm; or by appointment	Flexible up to 200 ft	Yes	Yes	\$ 350
4	Ball Toilet & Septic Service	3725 Jeffrey Blvd. Blasdell, NY14219  Tel-716 823 3606	2 sewage truck - 1,000 gal and 5,000 gal	Mon – Fri 6:00 am - 4:30 pm; or by appointment	Flexible up to 200 ft	Yes	Yes	\$ 230

Based on the above, the EPA hereby proposes to make an affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the New York State area of Lake Erie. A 30 day period for public comment has been opened on this matter, and the EPA invites any comments relevant to its proposed determination. If, after the public comment period ends, the EPA makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State area of Lake Erie, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

Dated: September 17, 2013.

Judith A. Enck, Regional Administrator, Region 2.

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